

14

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,  
vs.  
WISNOM COMPANY,  
Respondent.

Transcript of the Record

Upon Petition to Review an Order of the United States  
Board of Tax Appeals.

FILED

MAY 27 1935

PAUL P. O'BRIEN,  
CLERK



United States  
Circuit Court of Appeals

For the Ninth Circuit.

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COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

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## INDEX

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## APPEARANCES:

For Petitioner:

WM. A. GARLICK, Esq.

For Respondent:

JAMES T. HASLAM, Esq.

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Docket No. 74891

WISNOM COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## DOCKET ENTRIES:

1934

Feb. 16—Petition received and filed. Taxpayer notified. (Fee paid).

Feb. 16—Copy of petition served on General Counsel.

Mar. 15—Answer filed by General Counsel.

Mar. 21—Copy of answer served on taxpayer.

1935

Apr. 13—Joint motion to place on day calendar of 4/24/35 filed by the parties. 4/15/35 granted.

Apr. 18—Stipulation of facts filed.

Apr. 24—Hearing had before Mr. Murdock, Division 3. On motion of Commissioner—stipulation of facts offered in evidence and case submitted. No briefs.

1935

- Aug. 21—Memorandum opinion rendered — Mr. Murdock, Division 3. Decision will be entered under Rule 50.
- Sept. 3—Motion for order of redetermination filed by General Counsel.
- Sept. 5—Hearing set Sept. 25, 1935 on settlement, Rule 50.
- Sept. 16—Consent to settlement filed by taxpayer.
- Sept. 24—Decision entered—Mr. Murdock, Division 3.
- Dec. 14—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by General Counsel.

1936

- Jan. 3—Proof and affidavit of service filed by General Counsel.
- Feb. 8—Motion for extension to March 31, 1936 to complete and transmit record filed by General Counsel.
- Feb. 8—Order enlarging time to 3/31/36 to prepare and deliver record entered.
- Feb. 28—Praecipe filed—proof of service thereon. [1\*]

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\*Page numbering appearing at the foot of page of original certified Transcript of Record.



[Title of Court and Cause.]

PETITION.

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, IT:AR:E-4, AMcM-60D, dated January 17, 1934, and as a basis of its proceedings alleges as follows:

Jurisdiction in the Board:

1. The petitioner is a corporation organized and existing under and by virtue of the laws of the State of California, having its principal place of business at 231 Second Avenue, San Mateo, California.

2. The notice of deficiency, a copy of which is attached hereto, marked Exhibit "A", was mailed to the petitioner on or after January 17, 1934.

3. The taxes in controversy are income taxes for the calendar year 1931, and are less than Ten Thousand Dollars (\$10,000.00), to wit: Three Hundred Dollars, (\$300.00).

The deficiency claimed by the Commissioner of Internal Revenue was Four Hundred Seventy-six and 89/100 Dollars [2] (\$476.89), of which amount the petitioner conceded One Hundred Seventy-six and 89/100 Dollars, (\$176.89), and paid the latter amount, together with interest, to the Collector of Internal Revenue at San Francisco, California, on January 26, 1934. See official receipt attached hereto, marked Exhibit "B".

4. Wherefore, the petitioner now alleges that the Board has full jurisdiction of the controversy.

Assignment of Error:

5. The determination of the disputed portion of the deficiency, to wit: Three Hundred Dollars, (\$300.00), set forth in said notice of deficiency is based upon the following error:

The Commissioner of Internal Revenue disallowed a deduction of Two Thousand Five Hundred (\$2,500.00), taken by the petitioner in determining its statutory net income for Federal income tax purposes for the calendar year 1931, on the ground that said expenditure was made for the purpose of defeating legislation and, therefore, was not deductible under the provisions of 23(n) of the Revenue Act of 1928, and Article 262 of Regulations 74, whereas, said expenditure was an ordinary and necessary expense, under the provisions of Section 23(a) of the Revenue Act of 1928, and Article 121 of Regulations 74, and, therefore, legally deductible.

Statement of Facts:

6. The petitioner, Wisnom Company, is a close held, family corporation which was founded and incorporated March 21, [3] 1904, by Mr. Robert Wisnom, now deceased, father of the present stockholders, for the purpose of taking title to his many San Mateo real property holdings and improving, operating and conserving them as a major part of his substantial estate.

7. The petitioner's principal business is the owning, holding, operating, leasing and renting of im-

proved real estate within the commercial district of the City of San Mateo, State of California.

8. The City of San Mateo is credited with a population of 13,444, by the United States census of 1930 and has an area of 9.75 square miles.

9. Said city is zoned by Ordinance No. 235, adopted by the City Council, March 20, 1922. The present city charter was adopted in the year 1923 and ratifies previously adopted ordinances. Several minor amendments have been made to Ordinance No. 235, none of which are relevant to or affect the instant case.

10. There is attached hereto, marked Exhibit "C", a photostatic copy of a portion of said city's official zoning map, which, in conjunction with said Ordinance No. 235, classifies the property thus:

First Residential, indicated by the color pink.

Second Residential, indicated by the color blue.

Commercial District, indicated by the color yellow.

Light Industrial, indicated by the color brown.

Heavy Industrial, indicated by the color green.

Apartment House, indicated by the cross sections.

11. The major portion of the petitioner's improved, [4] rental property is located in blocks 4, 5, 8 and 9 of the Taylor Addition and block 15 of the Brewers Subdivision of the City of San Mateo, and all of it is within the Commercial District zone and in the heart of the principal business center of

said city. These properties are indicated by a red outline or border, on the zoning map, Exhibit "C".

12. A considerable portion of the Commercial District of the City of San Mateo has not been improved and utilized, to the ultimate degree, as commercial business property. This is particularly true of the east and south portion of the district, and there is ample room or area within this district to accommodate such future growth of business as may be required by increased population, over a long period of years.

13. Heretofore, the movement or trend of business, in said city, has been toward the north and south, and in the extreme south of the city one street has been zoned as commercial for a distance of several blocks.

14. However, the most recent trend of business is toward the west, along Baldwin, Second and Third Avenues.

15. Since the inception of the zoning laws of various "peninsula" municipalities, including the City of San Mateo, there has been repeated attempts made, by selfish interests, to modify, break down, or repeal the zoning ordinances.

16. In the year 1931, the Baywood Park Company, a corporation, were the owners of many acres of level and valuable land within the City of San Mateo. Said land fronts on El Camino Real, on the west side thereof, and Blocks A, B, C, E and F, thereof, are shown on Exhibit "C", hereto attached. [5]

17. The aforesaid blocks, A, B, C, E and F, were and now are zoned as "Second Residential District", and Third Avenue intersects the tract between blocks B and F.

18. The corporation, Baywood Park Company, for the purpose of enhancing the value of their property and reducing sales resistance, desired to change the zone classification of Lots 1 to 14, inclusive, of Block B, and Lots 1 to 7, inclusive, of Block F, from "Second Residential District" to "Restricted Business District", and inaugurated a powerful movement to obtain such rezoning.

19. The owners of the property within the present Commercial District, one of which was the petitioner, realizing the danger to their property values and rental incomes in the event the business district was extended across and west of El Camino Real and, for the purpose of preventing irreparable damage to said property values, immediately effected an informal organization and strenuously opposed the rezoning movement.

20. The Baywood Park Company, by agreeing to reimburse the City of San Mateo for all expenses incurred by the city in the rezoning movement, induced the City Planning Commission to recommend to the City Council, that Ordinance No. 235 be amended to classify Lots 1 to 14, inclusive, in Block B, and Lots 1 to 7, inclusive, in Block F, fronting on Third Avenue immediately west of El Camino Real, as "Restricted Business District".



21. On October 5, 1931, the San Mateo City Council passed Resolution No. 31, authorizing a special municipal election to be held Tuesday, November 17, 1931, for the purpose of determining this rezoning question. [6]

22. Said special election was held November 17, 1931.

23. No other questions or matters were submitted to the electorate at said special municipal election and the rezoning movement was defeated.

24. The cost of this rezoning activity, to the City of San Mateo, was Four Hundred Sixty-two and  $\frac{73}{100}$  Dollars, (\$462.73).

25. In due course, the Baywood Park Company paid to the City of San Mateo, Four Hundred Sixty-two and  $\frac{73}{100}$  Dollars, (\$462.73), in accordance with their agreement with the City of San Mateo, entered into before the election was authorized and called.

26. The petitioner's proportionate share of the expense incurred in defeating the aforesaid rezoning movement was Two Thousand Five Hundred Dollars, (\$2,500.00).

27. Said Two Thousand Five Hundred Dollar, (\$2,500.00), expense was incurred and paid by the petitioner in the calendar year 1931.

28. In determining its statutory net income for Federal income tax purposes for the calendar year 1931, the petitioner deducted the said Two Thousand Five Hundred Dollars, (\$2,500.00), as an ordinary and necessary business expense, under the pro-

visions of Section 23(a) of the Revenue Act of 1928, and Article 121, Regulations 74.

29. The respondent disallowed said deduction of Two Thousand Five Hundred Dollars (\$2,500.00).

[7]

WHEREFORE, the petitioner prays:

(a) That this Board may hear this proceeding,

(b) That this Board find and hold that the respondent erred in disallowing said Two Thousand Five Hundred Dollars, (\$2,500.00), deduction, and

(c) Redetermine the deficiency for the calendar year 1931 to be One Hundred Seventy-six and 89/100 Dollars, (\$176.89).

It is respectfully suggested that the respondent refer this petition to the Technical Staff's representative at San Francisco, California, for the purpose of effecting a stipulation of facts, if possible, and, perhaps, settling this case out of Court.

WM. A. GARLICK

Counsel for Petitioner,

625 Market Street,

San Francisco, California. [8]

VERIFICATION.

State of California,

City and County of San Mateo—ss.

JOHN WISNOM, being first duly sworn, deposes and says: that he is an officer, to-wit, the president of WISNOM COMPANY: that said company is a corporation and for that reason affiant makes this verification for and on its behalf; that he has read

the above Petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters he believes it to be true.

JOHN WISNOM

Subscribed and sworn to before me this 10th day of February, 1933.

[Seal]                      ELLA S. IRVING,  
Notary Public in and for the City and County of  
San Mateo, State of California. [9]

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EXHIBIT "A".

TREASURY DEPARTMENT  
WASHINGTON

January 17, 1934.

Office of  
Commissioner of Internal Revenue  
Wisnom Company,  
231 Second Avenue,  
San Mateo, California.

Sir:

You are advised that the determination of your income tax liability for the year(s) 1931 discloses a deficiency of \$476.89 as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sun-



day as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of the deficiency.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this form will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing this form, or on the date assessment is made, whichever is earlier; **WHEREAS IF THIS FORM IS NOT FILED**, interest at the rate of 6% per annum will accumulate.

Respectfully,  
GUY T. HELVERING,  
Commissioner.

(Signed) By CHAS. T. RUSSELL,  
Deputy Commissioner.

Enclosures:

Statement

Form 870 [10]

## STATEMENT.

IT:AR:E-4

AMcM-60D

In re: Wisnom Company,  
231 Second Avenue,  
San Mateo, California  
Income Tax Liability.

Year—1931.

Income Tax Liability—\$16,004.54.

Income Tax Assessed—\$15,527.65.

Deficiency—\$476.89.

Reference is made to office letter dated December 8, 1933, advising you of the approval of the report submitted by the internal revenue agent in charge at San Francisco, California, a copy of which was transmitted to you under date of September 20, 1933, and which report is made a part of this letter.

Careful consideration has been given to your protest dated December 12, 1933, in which exception is taken to the disallowance of an item of \$2,500.00 paid for the purpose of defeating a proposed change in the zoning laws of the City of San Mateo.

You are advised that the item in question is considered to be an unallowable deduction under the provisions of section 23(n) and article 262 of Regulations 74.

You are further advised that the Bureau does not regard the decision in the case of G. T. Wofford (49 F (2d) 1027) as establishing a binding prece-

dent to be followed in the adjustment of other cases where the circumstances are not closely analogous. In view of this action it is not considered advisable to refer the matter to the office of the General Counsel as requested in your protest.

A copy of this letter, together with a copy of the statement, has been mailed to your representative, Mr. William A. Garlick, 625 Market Street, San Francisco, California, in accordance with the authority conferred upon him in the power of attorney executed by you and on file with the Bureau. [11]

## EXHIBIT "B".

## RECEIPT FOR PAYMENT OF TAXES.

COLLECTOR'S OFFICE, 1st District of Cal.  
at S. F. Date Jan. 26, 1934.

RAR Addl. 1931

Addl. Tax	\$176.89
Int. to 1/26/34	16.21
Amount	\$193.10

Wisnom Company  
231 Second Avenue  
San Mateo, California

First Calif. Dist.

Paid

Jan. 26, 1934

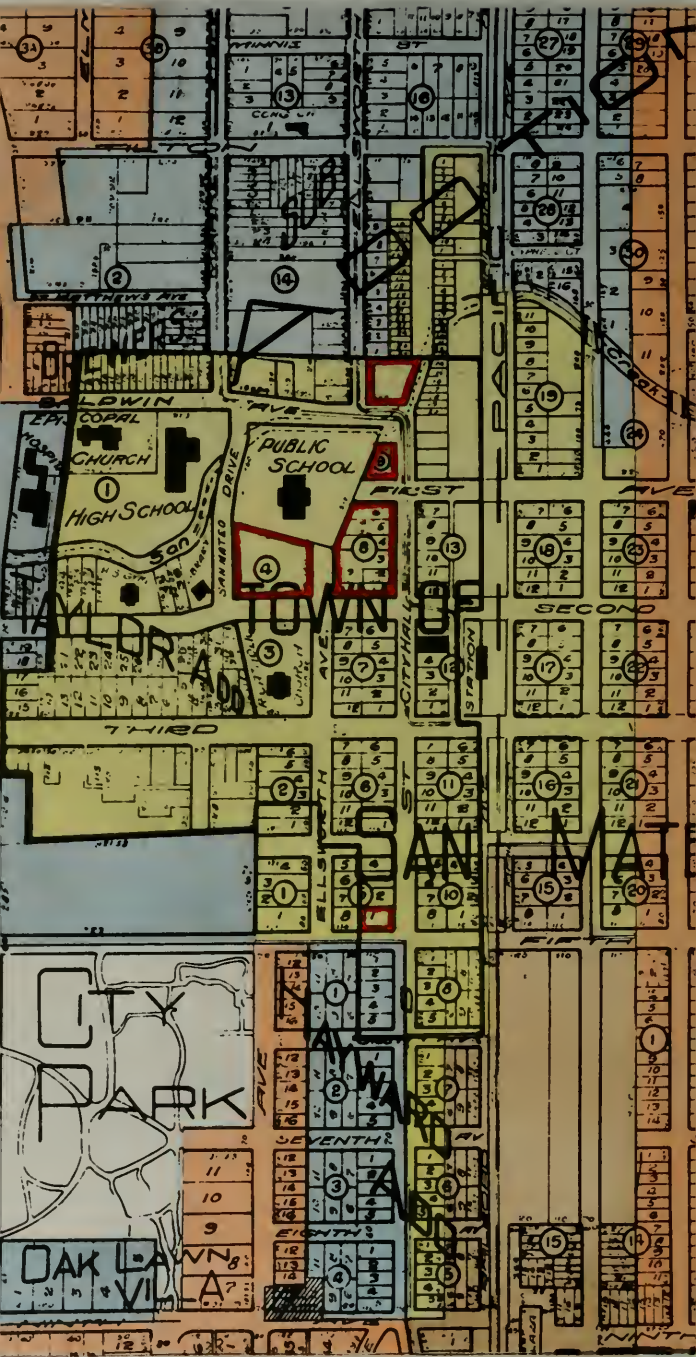
John V. Lewis

Collector

[Endorsed]: Filed Feb. 16, 1934. [12]







PORTION OF OFFICIAL ZONING MAP

City of San Mateo  
California

EXHIBIT "C"

[Title of Court and Cause.]

ANSWER.

The Commissioner of Internal Revenue, by his attorney, Robert H. Jackson, General Counsel, Bureau of Internal Revenue, for answer to the petition filed by the above-named petitioner, admits and denies as follows:

1, 2, 3 and 4. Admits the allegations contained in paragraphs 1, 2, 3 and 4 of the petition.

5. Denies that the determination of the deficiency tax is based upon error as alleged in the paragraph of the petition numbered 5.

6, 7 and 8. Admits the allegations contained in paragraphs 6, 7 and 8 of the petition.

9 to 27, inclusive. Denies the allegations contained in paragraphs 9 to 27, inclusive, of the petition.

28 and 29. Admits the allegations contained in paragraphs 28 and 29 of the petition.

Denies each and every allegation of fact not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the appeal be denied.

(Signed) ROBERT H. JACKSON

General Counsel,

Bureau of Internal Revenue.

Of Counsel:

EUGENE G. SMITH,

Special Attorney,

Bureau of Internal Revenue.

[Endorsed]: Filed U. S. Board of Tax Appeals,  
Mar. 15, 1934. [14]



[Title of Court and Cause.]

James T. Haslam, Esq., for the petitioner.

MEMORANDUM OPINION.

MURDOCK: The Commissioner determined a deficiency of \$476.89 in the petitioner's income tax for the year 1931. A part of the deficiency is due to the disallowance of a deduction of \$2,500 representing an amount paid in 1931 for the purpose of defeating a proposed change in the zoning laws of the city of San Mateo, California. The error assigned is the action of the Commissioner in disallowing the deduction of \$2,500 as an ordinary and necessary expense within the meaning of section 23(a) of the Revenue Act of 1928. The facts have been stipulated. The question here is whether this expenditure was an ordinary and necessary expense of carrying on the business of the taxpayer.

The petitioner owned many pieces of real estate within the commercial district zone of San Mateo. Its principal business was owning, improving, holding, operating, leasing and renting its own real estate. In 1931 the owners [15] of certain property then within a residential zone tried to effect a change in zoning whereby additional areas would be classified as "Restricted Business District" by a city ordinance. The petitioner and others owning property in the commercial district informally organized and successfully opposed the movement to rezone because they feared their property values and rentals would be reduced. The proposed change



was defeated in an election held on November 17, 1931. The petitioner paid its proportionate share of the expense of defeating the movement to rezone. The payment was made in 1931 and amounted to \$2,500.

The petitioner has made a prima facie case. There is no reason to suppose that the measures taken by the petitioner and its associates were improper or illegal. The petitioner is entitled to the deduction. *G. T. Wofford*, 15 B. T. A., 1225, aff'd. 49 Fed. (2) 1027.

Decision will be entered under Rule 50.

[Endorsed]: Entered Aug. 21, 1935. [16]

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United States Board of Tax Appeals.  
Docket No. 74891.

WISNOM COMPANY,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### DECISION.

Pursuant to the Board's Memorandum Opinion entered August 21, 1935, the respondent filed a proposed computation and notice of settlement on September 3, 1935. On September 16, 1935 the petitioner

filed a notice of acquiescence in the respondent's computation. Therefore, it is

ORDERED and DECIDED that there is a deficiency for the year 1931 in the amount of \$176.89.

[Seal] (s) By J. E. MURDOCK

Member,

United States Board of Tax Appeals.

[Endorsed]: Entered Sep. 24, 1935. [17]

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[Title of Court and Cause.]

PETITION FOR REVIEW AND ASSIGN-  
MENT OF ERRORS.

To the Honorable Judges of the United States  
Circuit Court of Appeals for the Ninth Circuit:

NOW COMES Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Frank J. Wideman, Assistant Attorney General, Herman Oliphant, General Counsel for the Department of the Treasury, and Irving M. Tullar, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I.

Your petitioner for review (hereinafter referred to as the Commissioner) is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States of America, holding his office by virtue of the laws of the United States of America. Your respondent (hereinafter referred to as the taxpayer) is a corporation organized and existing under and by virtue of the laws of the

State of California, with its principal office at 231 Second Avenue, San Mateo, California. The taxpayer filed its income tax return for the year involved herein with the Collector of Internal Revenue for the State of California, whose office is located in the City of San Francisco, California, [18] and in the judicial circuit of the United States Circuit Court of Appeals for the Ninth Circuit.

## II.

The Commissioner determined a deficiency in income tax for the calendar year 1931 in the amount of \$476.89.

In accordance with the provisions of Section 272 of the Revenue Act of 1928, the Commissioner, on January 17, 1934, sent to the taxpayer, by registered mail, a notice of said deficiency. The taxpayer filed an appeal with the United States Board of Tax Appeals in which the deficiency determined by the Commissioner was conceded to the extent of \$176.89 and contested as to the amount of \$300.00, and sought redetermination thereof.

The appeal was filed on February 16, 1934, and answer thereto filed on March 15, 1934.

The cause was submitted to the Board on an agreed stipulation of fact and, on August 21, 1935, the Board promulgated its finding of fact and opinion and, on September 24, 1935, entered its final order of redetermination wherein and whereby the Board ordered and decided that there was a

deficiency for the year 1931 in the amount of \$176.89.

### III.

The nature of the controversy is briefly described as follows:

The taxpayer is the owner of real estate in the commercial district of San Mateo, California, which it improves and rents. Owners of other property organized to change their property then zoned as "residential" [19] to "restricted business". The taxpayer and other commercial property owners organized to oppose the change. A rezoning ordinance was submitted at a special election and was defeated. The expenses incurred in the activities of the taxpayer and other commercial property owners to defeat the rezoning ordinance were apportioned against the several property owners, the taxpayer being required to pay \$2,500.00, which it claimed as a deduction from gross income for the year 1931. The deduction was disallowed by the Commissioner.

### IV.

The United States Board of Tax Appeals held that the taxpayer was entitled to the deduction.

### V.

The Commissioner says that in the decision and final order entered by the Board of Tax Appeals, manifest error occurred and intervened to the prejudice of the Commissioner and he assigns the following errors, and each of them, which he avers, occurred in the decision and final order of rede-

termination and upon which he relies to reverse the said decision and final order of redetermination so rendered and entered by the Board of Tax Appeals, to wit:

1. The Board of Tax Appeals erred as a matter of law in holding and deciding that the taxpayer was entitled to deduct as an ordinary and necessary expense an amount expended to defeat proposed legislation.

2. The Board erred as a matter of law in failing to hold and decide that the taxpayer was not entitled to deduct the amount expended to defeat proposed legislation. [20]

WHEREFORE, the Commissioner petitions that the decision and order of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit; that a transcript of the record be prepared in accordance with law and with the rules of said Court and transmitted to the Clerk of said Court for filing; and that appropriate action be taken to the end that the errors herein complained of may be reviewed and corrected by said Court.

(Signed) FRANK J. WIDEMAN

Assistant Attorney General.

(Signed) HERMAN OLIPHANT

General Counsel for the  
Department of the Treasury.

Of Counsel:

IRVING M. TULLAR,

Special Attorney,

Bureau of Internal Revenue.

United States of America  
District of Columbia—ss.

IRVING M. TULLAR, being duly sworn, says that he is Special Attorney of the Bureau of Internal Revenue, and as such is duly authorized to verify the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; that said petition is true of his own knowledge, except as to the matters therein alleged on information and belief, and as to those matters he believes it to be true.

(Signed) IRVING M. TULLAR

Sworn and subscribed to before me this 14 day of December, 1935.

(Signed) GEORGE W. KREIS

Notary Public.

My commission expires Nov. 16, 1937.

[Endorsed]: U. S. Board of Tax Appeals. Filed Dec. 14, 1935. [21]



[Title of Court and Cause.]

NOTICE OF FILING PETITION FOR  
REVIEW.

To: Wisnom Company,  
231 Second Avenue,  
San Mateo, California.

To: William A. Garlick,  
625 Market Street,  
San Francisco, California.

You are hereby notified that the Commissioner of Internal Revenue, did, on the 14 day of December, 1935, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Board heretofore rendered in the above-entitled cause. A copy of the petition for review and assignment of errors, as filed, is attached and is served on you.

Dated this 14 day of December, 1935.

(Signed) HERMAN OLIPHANT

General Counsel for the  
Department of the Treasury.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignment of errors mentioned therein, is acknowledged this 20 day of December, 1935.

.....  
Respondent on Review.

(Sgd) WM. A. GARLICK

Attorney for Respondent on Review. [22]

[Title of Court and Cause.]

PROOF OF SERVICE OF NOTICE OF FILING  
PETITION FOR REVIEW.

State of California

City and County of San Francisco—ss.

Louis Braunagel, being first and duly sworn, deposes and says:

I am a citizen of the United States of America, over the age of twenty-one years, and not a party to or in any way interested in the proceeding in which this Notice was issued.

On the 19th day of December, 1935, I served the annexed Notice of Filing Petition for Review on the Wisnom Company, a corporation in the person of David Wisnom, Secretary-Treasurer of the corporation, at 164 B Street, San Mateo, California, by delivering to and leaving with him personally a copy of the said Notice of Filing Petition for Review and a copy of the Petition for Review and Assignment of Errors and at the same time exhibiting to him the annexed original Notice.

(s) LOUIS BRAUNAGEL

Subscribed and sworn to before me this 19th day of December, 1935.

(s) HARRISON N. RIGG

Internal Revenue Agent.

[Endorsed]: U. S. Board of Tax Appeals. Filed  
Jan. 3, 1936. [23]



[Title of Court and Cause.]

PRAECIPE FOR RECORD.

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit, and deliver to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, copies of the documents and records in the above-entitled cause in connection with the petition for review by the said United States Circuit Court of Appeals for the Ninth Circuit, heretofore filed by the Commissioner of Internal Revenue.

1. Docket entries of the proceedings before the Board in the above-entitled proceeding.
2. Pleadings before the Board.
3. Memorandum opinion promulgated August 21, 1935.
4. Petition for review and notice of filing petition for review with acknowledgment of service endorsed thereon.
5. This praecipe.

(Signed) HERMAN OLIPHANT

General Counsel for the  
Department of the Treasury.

Service of a copy of the within praecipe is hereby admitted this 20 day of February, 1936.

(Sgd) WM. A. GARLICK

Attorney for Respondent.

[Endorsed]: U. S. Board of Tax Appeals. Filed Feb. 28, 1936. [24]

[Title of Court and Cause.]

CERTIFICATE.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 24, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 13th day of March, 1936.

[Seal]

B. D. GAMBLE

Clerk,

United States Board of Tax Appeals.

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[Endorsed]: No. 8149. United States Circuit Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Wisnom Company, Respondent. Transcript of the Record Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed March 17, 1936.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

EL.  
Jaw.